

Crl. Appeal No. 1941-SB of 2002

Date of Decision: July 22,2013

Balbir Singh Petitioner

Versus

State of Punjab Respondent

Coram: Hon'ble Ms. Justice Ritu Bahri

1.To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. D.R.Punia, Advocate
for the petitioner.

Mr. Amrit Pal Singh Gill, AAG, Punjab.

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RITU BAHRI, J. (Oral)

This appeal is against the judgment dated 08.10.2002 passed by the Judge, Special Court, Nawanshahar whereby the appellant Balbir Singh has been convicted under Section 15 of the NDPS Act and sentenced to rigorous imprisonment for a period of one year and a fine of Rs. 1,000/- or in default to further undergo R.I. for two months.

The case of the prosecution in brief is that on

15.07.2001, the police party headed by ASI Tarsem Singh, PW-5 and constituted by PW-4 Constable Sandeep Singh, Harkewal Ram and Constable Gian Singh was patrolling the area for checking the suspected elements. The accused was spotted coming from the Eastern side of bridge of the canal in village Gail Majari. He was carrying a plastic bag Ex. P-1. He was apprehended and the search was conducted by PW-5 ASI Tarsem Singh as he showed confidence in ASI Tarsem Singh. The statement was recorded as Ex.PB which was duly attested by Constable Sandeep Singh, PW-4. An attempt was made by ASI Tarsem Singh to contact DSP Mandir Singh but he was not available. On search of the bag, Ex.P1, it contained 250 grams of poppy husk. It contained 5 kg. 750 grams, total 6 kg of poppy husk. Out of the same, 250 grams were taken out as a sample. These were sealed and was handed over to PW-4 as Ex.P-C. A rough site plan Ex.PF was prepared and a ruqa EX.PG was sent to the Police Station where upon FIR Ex. PH was recorded. The recovered articles were deposited in the malkhana and the accused was arrested. The relevant record was deposited with the D.F.S.L. Chandigarh on the same day. Vide report Ex.PJ, the Chemical Examiner has concluded that the sample packet contained poppy husk, the challan was presented. After presentation of challan, charges were framed under Section 15 of the NDPS Act.

The prosecution examined C2 Pawanjit Singh, Sub Inspector Ranjit Singh, HC Surinder Kumar, Constable Sandeep Singh, ASI Tarsem Singh and Tarsem Singh as PW-1 to PW-5 respectively.

Statement of the accused was recorded under Section 313 of the Cr.P.C. which made all the allegations leveled against him and pleaded innocence.

After going through the evidence, it came to a conclusion that prosecution had successfully established the guilt of the accused under Section 15 of the NDPS Act and he was convicted for one year rigorous imprisonment.

Non-compliance of Section 50 of the NDPS Act is the main ground of appeal on which the accused was sought to be acquitted. The recovery was effected on 15.07.2001 and the sample was sent to Forensic Science Laboratory on 29.07.2001 after the delay of 14 days and on this ground the prosecution story is not liable to be believed.

As far as the non-compliance of Section 50 of the NDPS Act is concerned, reference can be made to the judgment passed by the Supreme Court in Ajmer Singh vs. State of Haryana 2010(2) JT 175 where the Supreme Court while examining the application under Section 50 the NDPS Act in case of search of a bag carried by a person the compliance of Section 50 of the Act will not be applicable in a case where the search is made from a bag, briefcase,

container etc. In paragraph 13 it has been observed as under:

“A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (See Kalema Tumba v. State of Maharashtra and Anr. (1994(4) RCR (Criminal) 575 : JT 1999 (8) SC 293), State of Punjab v. Baldev Singh (JT 1994(4) SC 595), Gurbax Singh v. State of Haryana 2001 (1) RCR (Criminal) 702 : (2001(3) SCC 28). The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.”

However, in the facts of the present case, as per ASI Tarsem Singh, Investigating Officer of the case has stated that after capturing the accused, he had sought opinion whether he would be searched by a gazetted officer and he tried to contact the DSP Mandir Singh but he was not available. He noted down the opinion of accused Ex. PB

where he has deposed confidence in the said Investigating Officer. Hence, even though the search was made from the bag under the provisions of Section 15 of the NDPS Act were complied with and in writing the accused was agreed to be searched by the Investigating Officer, ASI Tarsem Singh.

As per the report of the Director of Forensic Science Laboratory, Punjab, Chandigarh Ex. PJ, the sample was received seal affixed and it was tallied with the specimen seal. Therefore, even if the sample was sent after the gap of 14 days, it does not rendered to the prosecution version doubtful. The said sample was deposited by MHC Surinder Kumar as per the statement while appearing as PW-3.

The petitioner was convicted on 08.10.2002 and was released on bail by this Court vide order dated 12.12.2002.

Counsel for the State on instructions from HC Kashmir Singh has informed that the petitioner is facing two other trials in FIR No. 299 dated 15.12.2008 under Sections 15-61-85 of the NDPS Act registered at Police Station Banga and FIR No.103 dated 1.9.2012 under Sections 15-61-85 of the NDPS Act registered at Police Station Rahon.

After going through the Judgment dated 8.10.2002 passed by the Judge, Special Court, Nawanshahar, and the records of the case, it is found that before making search on

the person of the accused, he had given option whether he would be searched by a Gazetted officer or Investigating officer and he deposed his confidence in the Investigating Officer ASI Tarsem Singh as per Ex.PB. This statement has been attested by Constable Sandeep Singh, therefore, the necessary provisions of Section 50 of the NDPS Act have been carried out. The sample which was prepared with 250 grams of poppy husk was, as per report of the Director Forensic Science Laboratory Ex.PA, having a seal affixed on it and it had tallied with the specimen seal. As per the statement made by MHC Surinder Kumar, ASI Tarsem Singh had deposited the sample with him as his case property. Therefore, even if there was a delay of 14 days in giving the sample for analyzing to the Director Forensic Science Laboratory it is not fatal to the prosecution case. The minor discrepancies in the testimony of witnesses are liable to be ignored with the passage of time. The petitioner is a habitual offender as informed by HC Kashmir Singh and is facing trial after his sentence was suspended on 12.12.2012.

The argument that there was no independent witness is liable to be rejected as the general tendency of the public is not to assist with the investigation.

The judgment dated 8.10.2002 passed by Judge, Special Court, Nawanshahar, does not require any interference.

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The appeal is dismissed.

22.7.2013
Rupi

(RITU BAHRI)
JUDGE